

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	CRIMINAL NO. G-01-11-S (01)
	§	CIVIL ACTION NO. G-06-566
RICHARD L. CRAIG	§	

OPINION AND ORDER


On March 9, 2007, Richard L. Craig, a named Defendant in the above criminal action, filed a Notice of Appeal dated by him on February 21, 2007, in an effort to appeal from the Final Order of this Court, entered on January 11, 2007, denying his Motion under 28 U.S.C. § 2255. Craig also filed an Application to Proceed on Appeal In Forma Pauperis. Craig did not file an application for the issuance of a Certificate of Appealability.

An appeal from a Final Order denying § 2255 relief must be filed within 30 days of the entry of the Final Order. Fed. R. App. P. 4(a)(1)(A) The thirtieth day after entry of the Final Order in this cause was Saturday, February 10, 2007. Craig' s Notice of Appeal, therefore, was due no later than Monday, February 12, 2007. Even assuming Craig placed his Notice of Appeal in the prison mail system on February 21, 2007, the day he signed it, see Houston v. Lack, 487 U.S. 266 (1988), it was already too late to perfect an appeal. The United States Court of Appeals cannot exercise jurisdiction absent a timely Notice of Appeal. United States v. Adams, 106 F.3d 646, 647 (5th Cir. 1997) Because any present attempt to appeal would be taken in bad faith, Craig' s Application to Proceed on Appeal In Forma Pauperis (Instrument no. 324) is **DENIED**.

A Notice of Appeal can also be treated as a request for a Certificate of Appealability. United States v. Orozco, 103, Fl.3d 389 (5th Cir. 1996) For the reasons expressed in the Report

and Recommendation of the United States Magistrate Judge which was adopted by this Court as the basis for denying Craig' s Motion, the Court finds that Craig has not made a substantial showing of the denial of any federal constitutional right, 28 U.S.C. § 2253(c), and his implicit request for a Certificate of Appealability is, therefore, **DENIED**.

DONE at Galveston, Texas this 20th day of March, 2007.



Samuel B. Kent
United States District Judge